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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/679,054

10/03/2003

Kevin G. Woodruff

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EXAMINER

SHRESTHA, BIJENDRA K

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/679,054	Applicant(s) WOODRUFF ET AL.	
	Examiner BIJENDRA K. SHRESTHA	Art Unit 3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-26 and 34-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-26 and 34-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/03/2003 and 10/31/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Non-Final Office action is in response to the response filed on January 16, 2009. Claims 10-14, 16-26 and 34-51 are pending.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/16/2009 has been entered.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 10-14, 16-26 and 34-51 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over 1-4, 6-16, 18-32, and 34-41 of Application No. 10/679,071. Although the conflicting claims are not identical,

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they are not patentably distinct from each other because '071 application in claims 1-4, 6-16, 18-32, and 34-41 teaches all the elements in claims 1-33 in the instant application.

This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

As per claims 1-4, 6-12 of application '071 teaches fixed income security having principal amount, a maturity date, an interest rate and a forward purchase contract.

Claims 13-16, 18-32 and 34-41 of the application teach method and system comprising a issuing unit, fixed income security and a forward purchase contract where fixed income security and the forward purchase contract are separable.

5. Claims 10-14, 16-20, 24, 26, 27, 30 and 33 are rejected on the ground of nonstatutory double patenting over claims 1, 6, 10-13, 22, 23 and 25 of Application No. 10/677,172. Although the conflicting claims are not identical, they are not patentably distinct from each other because '172 application in claims 1, 6, 10-13, 22, 23 and 25 teaches all the elements in claims 10-14, 16-20, 24, 26, 27, 30 and 33 in the instant application.

This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

As per claims 10-14, 16-20, 24, 26, 27, 30 and 33 of instant application, application '172 teaches method and system comprising a issuing unit, fixed income security and a forward purchase contract where fixed income security and the forward purchase contract are separable.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 10-14, 16-26 and 34-51 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 10, 34 and 43, as best understood, it appears that the claimed method steps could simply be performed by mental process alone and are not statutory. Based on Supreme Court precedent, a proper process must be tied to another statutory class or transform underlying subject matter to a different state or thing (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)). Since neither of these requirements is met by the claim, the method is not considered a patent eligible process under 35 U.S.C. 101. To qualify as a statutory process, the claim should positively recite the other statutory class to which it is tied, for example by identifying the apparatus that accomplished the method steps or positively reciting the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

8. Claims 10-14, 16-26 and 34-51 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A forward contract is considered to be nonfunctional descriptive material because mere arrangements or

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compilations of facts or data, without any functional interrelationship is not a process, machine, manufacture, or composition of matter according to MPEP §2106.02. Finally, a futures contract by itself is a recitation of duties and obligations which render the claim directed to nonstatutory subject matter.

Also, MPEP § 2107.01 states an invention that is not a machine, an article of manufacture, a composition or a process cannot be patented. See *Diamond v. Chakrabarty*, 447 U.S. 303, 206 USPQ 193 (1980) and *Diamond v. Diehr*, 450 U.S. 175, 209 USPQ 1 (1981).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-14, 16-26 and 34-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aberman et al., U.S. Pub No. 2006/0218069 (reference A in attached PTO-892) in view Jones et al., U. S. Pub No. 2004/0133494 (reference B in attached PTO-892).

10. As per claim 10, Aberman et al. teach a method, comprising:

Issuing, by an issuer, a unit having a stated amount, the unit including a fixed income security and a forward purchase contract, wherein the fixed income security and the forward purchase contract are separable; receiving at issuance, by the issuer from a

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purchaser of the unit, a principal amount of the fixed income security in exchange for purchase of the unit (see Fig. 1 and 2; paragraph [0028] and [0053]; where REIT issues 6 million equity units of preferred stock for \$150 million costing \$25.00 per unit which is associated with 3-year forward purchase commitment and each forward purchase contract obligates holder or purchaser to buy on Aug. 17, 2005 a newly issued common stock shares of the issuer (commercial bank)); and

receiving, by the issuer, a payment due under the forward purchase contract upon resale of the fixed income security by the purchaser, wherein the issuer receives funds for the payment electronically by a computer system that is programmed to electronically deposit funds in an account associated with the issuer (see paragraph [0058]; where purchaser surrenders the preferred shares of the REIT and receives common stock of the parent at the settlement rate as described in paragraph [0054-0056]).

Aberman et al. do not teach paying at issuance, by the issuer of the unit, a forward purchase contract payment to the purchaser of the unit; and after issuance of the unit and prior to settlement of the forward purchase contract, paying periodically by the issuer forward purchase contract adjustment payments to the purchaser.

Jones et al. teach paying at issuance, by the issuer of the unit, a forward purchase contract payment to the purchaser of the unit; and after issuance of the unit and prior to settlement of the forward purchase contract, paying periodically by the issuer forward purchase contract adjustment payments to the purchaser (see paragraph [0018-0019], [0039] and [0048]; where issuer pays contract fee to holder (purchaser)) at

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issuance and periodically such as quarterly, annually or in any other installment agreed in the contract).

Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to include paying at issuance, by the issuer of the unit, a forward purchase contract payment to the purchaser of the unit; and after issuance of the unit and prior to settlement of the forward purchase contract, paying periodically by the issuer forward purchase contract adjustment payments to the purchaser of Aberman et al. because Jones et al. teach including above feature provide requirement for holder's obligation to pay settlement price to the issuer at the settlement date (Jones et al., paragraph [0018]).

11. As per claim 11, Aberman et al. in view Jones et al. teach claim 10 as described above. Aberman et al. further teach the method, wherein

the maturity date of the fixed income security of the unit is at least two years after the specified settlement date of the forward purchase contract (see paragraph [0053] and [0058]; where 3 year forward purchase commitment or purchase contract is assigned for each investment unit).

12. As per claim 12, Aberman et al. in view Jones et al. teach claim 10 as described above.

Aberman et al. do not teach paying, by the issuer interest fee payments on the fixed income security to the purchaser after issuance of the unit and prior settlement of the forward purchase contract.

Jones et al. teach paying, by the issuer interest fee payments on the fixed income security to the purchaser after issuance of the unit and prior settlement of the forward purchase contract (see paragraph [0039]; where issuer pays quarterly contract payment at annual payment rate of 7.00% to the holder or purchaser).

Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to include paying, by the issuer interest fee payments on the fixed income security to the purchaser after issuance of the unit and prior settlement of the forward purchase contract of Aberman et al. because Jones et al. teach including above feature provide requirement for holder's obligation to pay settlement price to the issuer at the settlement date (Jones et al., paragraph [0018]).

13. As per claim 13, Aberman et al. in view Jones et al. teach claim 12 as described above. Aberman et al. further teach the method comprising, at settlement,

the purchaser of the unit purchasing a quantity of equity securities from the issuer of the unit for a price equal to the stated amount of the unit (see Fig. 1; paragraph [0053] and [0058]).

14. As per claim 14, Aberman et al. in view Jones et al. teach claim 13 as described above. Aberman et al. further teach the method, wherein

the purchaser of the unit purchasing a quantity of equity securities of the issuer includes the purchaser purchasing a quantity of common stock of the issuer (see Fig. 1; paragraph [0053] and [0058]).

15. As per claim 16, Aberman et al. in view Jones et al. teach claim 15 as described above. Aberman et al. further teach the method, wherein

Resale of the fixed income security occurs prior to the settlement date (see paragraph [0059]).

16. As per claim 17, Aberman et al. in view Jones et al. teach claim 16 as described above. Aberman et al. further teach the method, wherein

the purchaser of the unit purchasing a quantity of equity securities of the issuer includes the purchaser paying the issuer with proceeds from resale of the fixed income security (see paragraph [0059]).

17. As per claim 18, Aberman et al. in view Jones et al. teach claim 10 as described above. Aberman et al. further teach the method, wherein

the fixed income security is a bond (see paragraph [0053]; the Examiner notes that preferred security is hybrid security, similar to bond in some respect).

18. As per claim 19, Aberman et al. in view Jones et al. teach claim 13 as described above. Aberman et al. further teach the method comprising

a subsidiary of the issuer of the unit issuing the fixed income security (see Fig. 1; paragraph [0028] and [0053]).

19. As per claim 20, Aberman et al. in view Jones et al. teach claim 19 as described above. Aberman et al. further teach the method comprising

the issuer of the unit guarantying payment obligations of the subsidiary (see paragraph [0034] and [0034]).

20. As per claim 21, Aberman et al. in view Jones et al. teach claim 13 as described above. Aberman et al. further teach the method comprising

a trust issuing the fixed income security, wherein the issuer of the unit has an ownership interest in the trust (see Fig. 1; paragraph [0053]).

21. As per claim 22, Aberman et al. in view Jones et al. teach claim 21 as described above. Aberman et al. further teach the method comprising

the issuer of the unit guarantying payment obligations of the trust (see paragraph [0053]).

22. As per claim 23, Aberman et al. in view Jones et al. teach claim 21 as described above. Aberman et al. further teach the method, wherein

the fixed income security includes a trust- preferred security (see paragraph [0053]; where REIT issued preferred stock).

23. As per claim 24, Aberman et al. in view Jones et al. teach claim 21 as described above. Aberman et al. further teach the method comprising

the trust purchasing a second fixed income security (see Fig. 1; paragraph [[0010], [0027] and [0028]; where REIT issues common stock to the parent 40 in return of contribution of REIT-eligible asset (include second fixed income securities such as mortgage backed securities) by the parent).

24. As per claim 25, Aberman et al. in view Jones et al. teach claim 21 as described above. Aberman et al. further teach the method comprising

the trust purchasing a second fixed income security issued by a subsidiary of the issuer of the unit (see paragraph [0010] and [0028]; REIT exchanges REIT-eligible asset with its common stock with its parent; the Examiner interprets REIT-eligible asset includes second fixed income security).

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25. As per claim 26, Aberman et al. in view Jones et al. teach claim 13 as described above. Aberman et al. further teach the method comprising

a parent of the issuer of the unit issuing the fixed income security (see paragraph [0034]).

26. As per claims 34 and 43, Aberman et al. teach a method, comprising a unit , wherein the unit includes:

a fixed income security having a maturity date, a principal amount and an interest rate (see paragraph [0053] and [0058]; where 6 million equity units preferred stock for about \$150 million is issued matures at the end of three years period; the examiner notes that preferred stock is hybrid security having characteristics of bond and stock in some way and another); and

a forward purchase contract(see paragraph [0053], wherein the fixed income security and the forward purchase contract are separable(see Fig. 2, paragraph [0030] and [0058]), wherein the forward purchase contract obligates a holder of the forward purchase contract to purchase a quantity of equity securities from an issuer of the unit for a price equal to a stated amount of the unit no later than a settlement date specified in the forward purchase contract(see paragraph [0034] and [0053]), and

receiving, by the issuer, a payment due under the forward purchase contract upon resale of the fixed income security by the purchaser, wherein the issuer receives funds for the payment electronically by a computer system that is programmed to electronically deposit funds in an account associated with the issuer (see paragraph

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[0058]; where purchaser surrenders the preferred shares of the REIT and receives common stock of the parent at the settlement rate as described in paragraph [0054-0056]).

Aberman et al. do not teach paying, by the issuer, a forward purchase contract payment at issuance of the unit to a purchaser of the unit pursuant to terms of the purchase contract; and after issuance of the unit and prior to settlement of the forward purchase contract, paying periodically by the issuer forward purchase contract adjustment payments to the purchaser

Jones et al. teach paying, by the issuer, a forward purchase contract payment at issuance of the unit to a purchaser of the unit pursuant to terms of the purchase contract; and after issuance of the unit and prior to settlement of the forward purchase contract, paying periodically by the issuer forward purchase contract adjustment payments to the purchaser (see paragraph [0018-0019], [0039] and [0048]; where issuer pays contract fee to holder (purchaser)) at issuance and periodically such as quarterly, annually or in any other installment agreed in the contract).

Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to include paying, by the issuer, a forward purchase contract payment at issuance of the unit to a purchaser of the unit pursuant to terms of the purchase contract; and after issuance of the unit and prior to settlement of the forward purchase contract, paying periodically by the issuer forward purchase contract adjustment payments to the purchaser of Aberman et al. because Jones et al. teach

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including above feature provide requirement for holder's obligation to pay settlement price to the issuer at the settlement date (Jones et al., paragraph [0018]).

27. As per claims 35 and 44, Aberman et al. in view of Jones et al. teach claim 34 and 43 respectively as described above. Aberman et al. further teach the unit, wherein the maturity date of the fixed income security is at least two years after the specified settlement date of the forward purchase contract (see paragraph [0053] and [0058]; where 3 year forward purchase commitment or purchase contract is assigned for each investment unit).

28. As per claims 36 and 45, Aberman et al. in view of Jones et al. teach claim 34 and 43 respectively as described above. Aberman et al. further teach the unit, wherein the fixed income security is issued by the issuer of the unit (see paragraph [0053]).

29. As per claim 37 and 46, Aberman et al. in view of Seaman teach claim 34 and 43 respectively as described above. Aberman et al. further teach the unit, wherein the fixed income security is issued by a subsidiary of the issuer of the unit (see paragraph [0034]).

30. As per claim 38 and 47, Aberman et al. in view of Jones et al. teach claim 34 and 43 respectively as described above. Aberman et al. further teach the unit, wherein the fixed income security is issued by a trust, wherein the issuer has an ownership interest in the trust (see paragraph [0053] and [0061]; where preferred securities is issued by Real Estate Investment Trust (REIT)).

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31. As per claim 39 and 48, Aberman et al. in view of Seaman teach claim 38 and 43 respectively as described above. Aberman et al. further teach the unit, wherein

the fixed income security is a trust-preferred security (see paragraph [0053]).

32. As per claim 40 and 49, Aberman et al. in view of Seaman teach claim 34 and 43 respectively as described above.. Aberman et al. further teach the unit, wherein

the fixed income security is a bond (see paragraph [0053]; the Examiner notes that preferred security is hybrid security, similar to bond in some respect).

33. As per claim 41 and 50, Aberman et al. in view of Jones et al. teach claim 34 and 43 respectively as described above. Aberman et al. further teach the unit, wherein

the issuer of the unit is not the issuer of the equity securities (see paragraph [0030] and [0034]).

34. As per claim 42 and 51, Aberman et al. in view of Jones et al. teach claim 34 and 43 respectively as described above. Aberman et al. further teach the unit, wherein

the fixed income security is issued by a parent of the issuer of the unit (see paragraph [0034]).

Conclusion

35. The prior art made of record and not relied upon is considered pertinent to applicant's disclosures. The following are pertinent to current invention, though not relied upon:

Aberman et al. (U.S. Pub No. 5,930,777) teaches financial instruments and method.

Bowen (U.S. Pub No. 2008/0065529) teaches method and system for securitizing contract valued on an index.

Bodurtha et al. (U.S. Pub No. 2003/0182219) teach total return asset contracts and associated processing systems.

Fisher et al. (U.S. Pub No. 2004/0153388) teach method and system for coupling investments for project funding.

Daughtery , III (U.S. Patent No. 6,263,321) teaches apparatus and process for calculating an option.

Lancaster et al. (U.S. Pub No. 2002/0133456) teach system and method for using derivative financial product in capacity-driven industries.

Higgins (U.S. Pub No. 2002/0120542) teaches basket option hedging method.

Lange (U.S. Patent No. 6,321,212) teaches financial product having a demand-based adjustable return and trading exchange therefor.

Pushka (U.S. Pub No. 2002/0103852) teaches system for optimizing investment performance.

Seaman (U.S. Pub No. 2002/0138382) teaches discounted security.

Woodley (U.S. Pub No. 2002/0178111) teaches portfolio hedging method.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bijendra K. Shrestha whose telephone number is (571)270-1374. The examiner can normally be reached on 7:00AM-4:30PM (Monday-Friday); 2nd Friday OFF.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571)272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alexander Kalinowski/
Supervisory Patent Examiner, Art Unit 3691

BKS/3691

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